

THE COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

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|---------------------------|---|-------------------------------------|
| _____ |) | |
| D.T.E. _____ |) | |
| NEW ENGLAND POWER COMPANY |) | Petition for exemption of electric |
| 25 Research Drive |) | substation additions from Zoning |
| Westborough, MA 01582 |) | Ordinances of Salem, Massachusetts. |
| _____ |) | |

**MOTION FOR A PROTECTIVE ORDER RE: CRITICAL
ENERGY INFRASTRUCTURE INFORMATION**

I. Introduction

New England Power Company (NEP) hereby requests that the Department of Telecommunications and Energy (Department) grant protection from public disclosure of the confidential and sensitive information submitted in this proceeding as Exhibit JWM-1. NEP submits this Motion in accordance with G.L. c. 25, §5D and G.L. c. 4, §7, cl. 26(n) as well as the Department's procedural rules at 220 C.M.R. 1.04(5)(a) and (c). Specifically, this Motion requests protection for the map of the NEMA Boston Transmission System which has been designated Critical Energy Infrastructure Information and is furthermore denominated as Exhibit JWM-1.

In the instant proceeding, NEP is seeking a zoning exemption from certain provisions of the City of Salem (Massachusetts) Zoning Ordinances. The exemption request, if granted, will allow NEP to proceed with a transmission infrastructure project at the Salem Harbor Station. As explained in the direct testimony of Mr. John W. Martin, P.E., the project will improve voltage support for customers in the North Shore region. The project is also part of a larger undertaking involving many parties (e.g., NEP, NSTAR, the Department, the Division of Energy Resources and the Independent System Operator) to examine the transmission constraints in the region and to propose reasonable solutions to those constraints.

Mr. Martin's testimony is supported in part by Exhibit JWM-1, a map showing the transmission system and critical associated facilities in the northeastern Massachusetts area. This exhibit has been designated "Critical Energy Infrastructure Information", according to the criteria established in *Critical Energy Infrastructure Information*, 100 FERC ¶ 61,256 (Sept. 5, 2002). National Grid USA and its affiliates provide this document to selected external audiences only on a need-to-know basis for transmission planning purposes. Due to reasonably-based concerns over national security, NEP seeks a Protective Order for this document in this proceeding. All other

exhibits and attachments to the direct testimony of all witnesses and the Petition are provided in full (in both hardcopy and .pdf formats).

NEP is tendering one (1) original plus six (6) hard copies of Exhibit JWM-1 under seal for Department staff, on the premise that this document will be held in the Department's offices and will not be distributed in hardcopy or on the Department's website unless the Hearing Officer denies this Motion. NEP has redacted Exhibit JWM-1 from the .pdf version of exhibits submitted today on CD, pending the Hearing Officer's Order on this Motion.

II. Legal Standard

Confidential information may be protected from public disclosure in accordance with G.L. c. 25, § 5D, which states in part:

The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be on the proponent of such protection to prove the need for such protection. Where the need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

The Department has construed this section of the law very narrowly, in keeping with the statute's presumption that information submitted to the Department is public information deserving of disclosure to the public. *Berkshire Gas Company, et al.*, D.P.U. 93-187/188/189/190, at 16 (1994). However, the statute does allow protection of confidential information where the proponent of protection can substantiate the need for non-disclosure. G.L. c.25 §5D.

In its recent ruling in D.T.E. 98-84 (April 22, 2003), the Department noted the heightened sensitivity of certain types of information in our nation's post-9/11 society and discussed the Legislature's recent enactment of additional statutory protections for Critical Energy Infrastructure Information. To-wit:

With respect to the protection of critical energy infrastructure information, the recent enactment of St. 2002, c.313, §1, inserting G.L. c.4, §7, cl. 26(n), augments the Department's authority to accord nondisclosure protection to records containing certain sensitive information. The newly added Clause 26(n) operates separate and apart from existing Department authority under G.L. c. 25, §5D. Clause 26(n) expressly exempts from the definition of "public records" information concerned with "utilities, transportation or other infrastructure ... the disclosure of which ... is likely to jeopardize public safety." The new clause authorizes the custodian of such records to withhold, where reasonable grounds exists, such records from inspection and copying under G.L. c. 66, § 10. We note

the relevance of this newly added exemption from the statutory definition of ‘public records’ and the discretionary authority it confers upon the Department ...

III. The Sealed Information is Highly Sensitive and Warrants Protection from Disclosure.

The information presented in Exhibit JWM-1 is highly sensitive in that it clearly shows the transmission system of northeastern Massachusetts plus the location, interconnection and regional relationship of specific facilities that comprise the transmission system. This is information that, should it fall into corrupt hands, could be used to damage, stop or otherwise hamper the operation of the region’s transmission system. It is the type of information that FERC does not disclose to third parties unless requestors meet certain criteria evidencing their legitimate need to have the information. *Id.* at 74-6. Full public disclosure of this information is not necessary for the Department to make a decision in this proceeding that will benefit the public to be served by the proposed project. Accordingly, NEP respectfully seeks protective treatment for Exhibit JWM-1.

WHEREFORE, for the reasons set forth herein, NEP respectfully requests that the Department grant the requested Motion for a Protective Order, pursuant to G.L. c. 25, §5D and G.L. c.4§7, cl. 26(n) and the Department’s procedural rules at 220 C.M.R. §1.04(5)(a) and (c).

Respectfully submitted,

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